In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 625

DAN W. DREW, PETITIONER

v.

RUFUS B. LAWRIMORE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Review is here sought of the court of appeals' decision upholding as a "reasonable administrative determination" (Pet. App. 7a) the location by the Department of Agriculture of certain boundary lines for "local administrative areas" used in the administration of the tobacco marketing program.

1. Petitioner, a large tobacco farmer, commenced this action in the District Court for South Carolina to obtain a higher tobacco quota for his farm by compelling the Department of Agriculture to change the "local administrative area" or "community" designation of his farm. Under the tobacco marketing program (7 U.S.C. (Supp. II) 1314c), the size of the

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tobacco acreage allotment of a farm depends in part upon the "community" in which the particular farm is located. This is so because the "average yield" of all the farms within a particular "community" is determinative of the maximum marketing quota for each farm in that "community" (7 U.S.C. 1314c(a)(5)). "Communities" are "local administrative areas" (7 C.F.R. 7.7) which the Secretary of Agriculture is authorized by statute to designate for the administration of farm programs (16 U.S.C. 590h(b)).[1] They are an essential part of the framework employed throughout the country in implementing and administering the major agricultural programs of the federal government.

By regulation the Secretary has delegated his power to designate administrative communities to the State Agricultural Stabilization and Conservation Committees (State Committees). These State Committees fix community boundaries after receiving recommendations from the County Agricultural Stabilization and Conservation Committees (County Committees) (7 C.F.R. 7.7).[2] Once community boundaries are established by the State Committee, the County Committee has the task of determining which farms are physically

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[1] "In carrying out the provisions of this section * * * [t]he Secretary shall designate local administrative areas as units for administration of programs under this section" (16 U.S.C. 590h (b)).

[2] "Each county shall be divided into local administrative areas, referred to * * * as 'communities'. * * * The boundaries of the communities shall be fixed by the State Committee after considering any recommendations by the county committee" (7 C.F.R. 7.7).

located within the various communities so established (7 C.F.R. 724.68(c)(5)), and of prescribing the quota of each farm based upon the farm's location within a particular community (7 C.F.R. 724.65(a)). The determination of a farm's quota by the County Committee may be reviewed at the request of a dissatisfied farmer by a Review Committee (7 U.S.C. 1363). The jurisdiction of a Review Committee is limited solely to those matters which a County Committee has authority to determine in establishing a quota (7 C.F.R. 711.12). The determination of the Review Committee, unlike determinations by the State or County Committees, must be based upon a record after an evidentiary hearing (7 U.S.C. 1363, 1365–66).

Petitioner regarded the quota set for him by the County Committee as improperly computed because it was based, he alleged, on an erroneous community designation of his farm. He thus sought and obtained review of his quota by the Review Committee. In the proceedings before the Review Committee, considerable conflicting evidence was introduced attempting to establish the community in which his farm was in fact located. Upon the record so established, the Review Committee affirmed the community designation of the County Committee and the quota set by the County Committee based upon this designation.

Petitioner then brought an action in the district court seeking review of this determination and relief in the nature of mandamus to compel the drawing of new community boundaries. The district court reversed the decision of the Review Committee and ordered that new community boundaries be drawn

(App. App. 3a–28a).[3] No challenge to this order was made by the government.

In compliance with the district court order, the State Committee, the sole administrative unit authorized to establish community boundaries (7 C.F.R. 7.7), drew new boundaries. Accompanying the map filed with the court showing the new boundaries was a lengthy statement by the State Committee setting forth an explanation of the factors considered in establishing the revised lines (App. App. 29a–43a). The statement noted that in setting boundaries the Committee had relied, among other things, upon records and statistics compiled by the Department of Agriculture and other governmental agencies, as well as the Committee members' first-hand knowledge and experience, and that administrative requirements, such as the number of farms in each community and natural resource factors, such as soil content and amount of rainfall, had been given careful consideration. The district court held that in determining the new boundaries the State Committee did not give proper consideration to natural resource factors. The court therefore ordered the drawing anew of community boundaries along lines specifically outlined by it, which the court felt gave proper effect to natural resource factors (App. App. 44a–49a).[4] An appeal of this order was taken by the government to the Fourth Circuit.

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[3] "App. App." refers to appellants' appendix filed in the court of appeals.

[4] The district court's belief that natural resource factors had to be considered in determining community boundaries was based on its interpretation of 16 U.S.C. 590h(b), which sets forth the basic administrative structure for agricultural pro-

The court of appeals reversed, finding that the district court had "refused to accept the reasonable administrative determination, and instead substituted its own" (Pet. App. 7a). By upholding the community boundaries administratively established, the court of appeals also rejected petitioner's contention that the procedures employed in establishing boundaries were unlawful.

2. The decision of the court of appeals is clearly correct and is not in conflict with any other decision. Review by this Court is thus not warranted.

a. The record fully supports the finding of the court below that the administrative determination of community boundaries was a reasonable one. It is well settled that courts will not interfere with reasonable administrative action and attempt to substitute their judgment for that of an administrative agency

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grams and requires the Secretary to designate "local administrative areas." The court ruled that the broad policy considerations of 16 U.S.C. 590g(a) must be read into every part of 590h(b), and therefore concluded the following policies, among others enumerated in 590g(a), must be considered in determining "local administrative areas": preservation and improvement of soil fertility; promotion of the economic use and conservation of land; and the diminution of exploitation and wasteful and unscientific use of soil resources (App. App. 13a).

The government argued that the statutory provisions, legislative history, and long-standing administrative practice demonstrate that community boundaries were to be determined solely by the requirements of efficient administration, without consideration of natural resource factors. The court of appeals, making clear that it was in no way approving the position of the district court that consideration of natural resource factors was required (Pet. App. 6a), found it unnecessary to decide the issue, since, in the court's view, such factors had in fact been taken into account by the State Committee in establishing the new boundaries (Pet. App. 6a—7a).

on a matter entrusted by statute to the judgment of an agency. See, *e.g.*, *Wilbur* v. *United States*, 281 U.S. 206, 218–219; *Work* v. *United States ex rel. Rives*, 267 U.S. 175, 177; *Ayrshire Corp.* v. *United States*, 335 U.S. 573; *Decatur* v. *Paulding*, 14 Pet. 497 514–517; *Freeman* v. *Brown*, 342 F. 2d 205, 214–215 (C.A. 5); *Sleeth* v. *Dairy Products Co. of Uniontown*, 228 F. 2d 165, 167–168 (C.A. 4), certiorari denied, 351 U.S. 966. Thus, the administrative determination here was properly upheld.

b. Petitioner's contention that the procedures employed in the administrative determination of community boundaries and in the review of such a determination are invalid is without merit. Petitioner's position is based upon a misconception of the powers and duties lawfully assigned to the County, State and Review Committees in administering the tobacco marketing program. Specifically, petitioner argues that any administrative determination of community boundaries must be based upon a record compiled at an evidentiary hearing at which affected persons have an opportunity to call and cross-examine witnesses. However, it is plain that no such right exists.

By statute (7 U.S.C. 1363, 1365–66), only Review Committee determinations must be based upon a record after a full evidentiary hearing. The jurisdiction of the Review Committee, however, is limited, and has uniformly been construed as being restricted to those matters which a County Committee has authority to determine. See 7 C.F.R. 711.12; *Fulford* v. *Forman*, 245 F. 2d 145 (C.A. 5); *Morrow* v. *Clayton*, 326 F. 2d 36 (C.A. 10); *Allen* v. *David* 334 F. 2d 592, 596 (C.A. 5); *Chandler* v. *David*, 350 F. 2d 669 (C.A.

5).[5] certiorari denied, 382 U.S. 977; *Rakestraw* v. *Winchester*, 254 F. Supp. 729 (M.D.N.C.). The County Committee has no authority to establish community boundaries—this duty has been delegated by the Secretary solely to the State Committee (7 C.F.R. 7.7). Thus, since the County Committee has no jurisdiction to determine community boundaries—it merely ascertains the location of particular farms within boundaries established by the State Committee—the Review Committee cannot properly review their location. And the State Committee, having sole authority for setting community boundaries, is subject to no requirement that its determinations be based only upon evidence adduced at an evidentiary hearing (see 16 U.S.C. 590h(b); 7 C.F.R. 7.7; compare 7 U.S.C. 1363, 1365–66). Accordingly, in determining community bound-

[5] Petitioner's reliance on the Fifth Circuit's decision in *Chandler* (Pet. 23–25) is misplaced. There a farmer challenged the authority of the Review Committee to determine the validity of certain transfers of cotton acreage allotments. In upholding the Review Committee's jurisdiction, the court pointed out that the statute "gives to the County Committee primary authority to approve a transfer of allotments from an eminent domain pool," and that "it may cancel transferred allotments which it finds were obtained by misrepresentation" (350 F. 2d at 676). Since the matter was one "properly to be considered by the County Committee * * *," the Review Committee had jurisdiction to review that body's determination, the court concluded (*id.* at 677). Thus, *Chandler* is plainly distinguishable from the instant case, for it cannot be maintained that the County Committee had authority to establish community boundaries. Indeed, the passage from the *Chandler* opinion quoted out of context by petitioner (Pet. 24–25) is directed toward distinguishing cases where the State Committee had exercised authority, so that Review Committee jurisdiction was lacking. When the *Chandler* opinion is read as a whole it is clear that it is not inconsistent with the decision of the court below.

aries, the State Committee was not required to restrict itself to evidence adduced at an evidentiary hearing.

Finally, establishment of the boundaries of "local administrative areas" by the Secretary of Agriculture is hardly a matter as to which an individual has a constitutional right to a hearing after notice, or one which, either constitutionally or statutorily, is required to be made upon the basis of a record.[6] Petitioner's due process contentions (Pet. 4, 16) are thus without merit; he had no right of cross-examination regarding the statement of the State Committee which accompanied the filing of the new community boundaries in compliance with the district court's order (see *supra*, p. 4). Indeed, although such a statement was not required, providing the district court with a written explanation of the considerations underlying the new boundaries established by the State Committee seems quite desirable.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

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[6] *E.g.*, *Bi-Metallic Investment Co.* v. *State Board of Equalization*, 239 U.S. 441; 1 Davis, *Administrative Law Treatise* §§ 6.06, 7.04–7.06 (1958); 5 U.S.C. (Supp. II) 553–554. Rather, such a determination involves action which is essentially legislative in character, taken pursuant to specific congressional authorization for the Secretary to so proceed (see note 1, *supra*). See *Highland Farms Dairy* v. *Agnew*, 16 F. Supp. 575, 586–587 (E.D. Va.), affirmed, 300 U.S. 608; *George A. Rheman Co.* v. *United States*, 133 F. Supp. 668, 673–675 (E.D. S.C.).

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